IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8966 OF 2005

Smt. Vittabai Kushappa Sapate & anr. ... Petitioners

V/s

Sou. Sushila Rangarao Kadam & anr. ... Respondents

Mr. Amit Borkar for the petitioners.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 18TH APRIL, 2006

P.C.:

1. Heard learned counsel for the petitioner. None appears for the respondents though served. Perused the record.

2. The tenant defendant has filed the application under Order 41 Rule 27 of the Civil Procedure Code in the pending R.C. Appeal No. 522 of 1997 making an application Exh.37 seeking to produce additional documentary evidence on record.

Most of the documents, as can be seen from the order of

the lower appellate Court, are part and parcel of some different proceeding which is also pending. The lower appellate Court has rejected the application on the ground that those documents are not necessary to enable the Court to pronounce the judgment. Moreover, it was held that the reasons disclosed in the application are sufficient and justified to allow the petition to lead additional evidence as contemplated under Order 41 Rule 27 and, as such, the application was rejected.

3. However, in my considered view, if the documents sought to be produced on record are already part and parcel of some other judicial proceeding pending in the Court of law, then the petitioner has option to summon those documents in the pending appeal as the documents pertain to copies of the judgments, extracts of property register record and some receipts. The lower appellate Court would issue the summons for production of the documents and shall allow both parties to argue on the basis of those documents and then decide the appeal on merits. The question whether those documents are necessary to enable the Court to pronounce the judgment or not would be the question to be decided at the time of final disposal of the appeal after perusing the summoned documents.

4. In the result, the petition is disposed of with no order as to costs, with direction that the petitioner shall make an application to the appellate Court to summon those documents in the pending appeal and the lower appellate Court shall give opportunity to both parties on the basis of those documents and then decide the appeal on merits.

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